



# THRIFT SAVINGS PLAN FACT SHEET

## Bankruptcy Information

This fact sheet explains how the filing of a bankruptcy petition will affect a Thrift Savings Plan (TSP) account or loan. Any questions should be directed to the Office of General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street NW, Washington, DC 20005, telephone: (202) 942-1660.

### ***1. Information About the TSP***

The TSP is part of the retirement system created for Federal employees by the Federal Employees' Retirement System Act of 1986. (See 5 U.S.C. §§ 8351, 8401-79.) The TSP is a tax-deferred retirement savings plan similar to those authorized under section 401(k) of the Internal Revenue Code.

### ***2. How does the TSP loan program work?***

You can gain temporary access to a portion of your TSP account with a TSP loan. You must return the money to your account, with interest, by making regularly scheduled loan payments through payroll deductions. (See 5 U.S.C. § 8433(g); 5 C.F.R. part 1655.) You may also make additional loan payments of any amount at any time from your personal funds. Because you repay a TSP loan to yourself, it is not a debt and the TSP is not your creditor.

### ***3. Must I stop my TSP loan payments when I file a bankruptcy action?***

The answer to this question depends on whether you file an action under chapter 7 of the Bankruptcy Code (in which non-exempt property of the debtor is distributed to creditors) or chapter 13 of the Bankruptcy Code (in which the debtor's future earnings are used to pay creditors).

Because a TSP loan is not a debt and the TSP is not your creditor, the bankruptcy court does not have jurisdiction over your TSP loan. Therefore, a chapter 7 bankruptcy action will not affect your obligation to repay a TSP loan and you must continue making loan payments as provided in your loan agreement.

However, your loan payments must stop if you file a chapter 13 bankruptcy action, unless the bankruptcy court expressly permits the payments to continue. This is because the bankruptcy court has jurisdiction over your earnings in a chapter 13 case and, without court approval, no party can exercise control over your earnings.

The TSP has instructed employing agencies and services to stop a participant's payroll deduction for loan payments when they receive a legal document showing that the participant has filed a chapter 13 bankruptcy action. Do not contact the TSP to stop your loan payments; only your employing agency or service can process such a request.

### ***4. What will happen to my account if my TSP loan payments are stopped?***

If you stop making loan payments for any reason other than an approved nonpay status, the TSP will send you a notice at the end of the calendar quarter in which you are in default. Interest will accrue on the loan during this period. If you do not make up the missed loan payments by the end of the following quarter, the TSP will close your loan account and report the unpaid loan balance (including the accrued interest) to the Internal Revenue Service as a taxable distribution to you (i.e., as a withdrawal) from your TSP account. You may have to pay income taxes on the amount of the distribution. You also may be subject to a 10 percent early withdrawal penalty.

Once a TSP loan account is closed, it cannot be reopened and the outstanding balance cannot be returned to the TSP. In addition, you may not apply for another TSP loan for 12 months from the date a taxable distribution is declared.

**Note for Members of the Uniformed Services:** TSP accounts for members of the uniformed services may include contributions from combat zone pay. Combat zone pay is exempt from Federal income taxes. Therefore, TSP contributions from combat zone pay are also exempt from Federal income taxes when they are distributed from a TSP uniformed services account. If the TSP declares a loan to be a taxable distribution, the portion of the outstanding loan balance that is attributable to tax-exempt contributions will not be subject to Federal income tax.

**5. *Can I temporarily suspend loan payments during my bankruptcy action?***

No. The TSP is required to close a loan account if payments do not continue under the terms of the loan agreement.

However, before you file a bankruptcy petition, you may be able to lower your payroll deduction payments by reamortizing your loan. If you reamortize your loan, you cannot extend the loan term beyond the 5-year limit (from the original loan issue date) for a general purpose loan or beyond the 15-year limit (from the original loan issue date) for a residential loan. Reamortization is not permitted once a loan is in default (i.e., payments have stopped).

**6. *What if the bankruptcy court allows me to repay my loan?***

You should immediately instruct your employing agency or service in writing to resume deducting your loan payments. You must provide the agency or service with the bankruptcy court order showing that your loan payments can continue. You will also have to make up any payments you missed out of your personal funds, and you must do so by the end of the calendar quarter following the quarter in which you missed the payments. You will receive information from the TSP explaining how to make up missed loan payments in such a case.

Please note, however, that your loan payments can only resume if the TSP has not yet closed your loan account.

**7. *Can the bankruptcy court change my TSP loan payment terms?***

No. Because your TSP loan is not a debt and the TSP is not your creditor, the bankruptcy court does not have jurisdiction over your TSP loan.

Therefore, the bankruptcy court cannot change the timing or the amount of your loan payments or require the TSP to accept loan payments through your chapter 13 plan.

**8. *Can my TSP loan be discharged in bankruptcy?***

No. Only a debt can be discharged in a bankruptcy action. As discussed above, your TSP loan is not a debt.

**9. *How is my access to the funds in my TSP account(s) affected by a bankruptcy?***

The funds in your account are held in trust for you by the TSP, and they are protected from the claims of creditors by a law which provides that they “may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process.” (See 5 U.S.C. §§ 8437(e), (g).) This provision is enforceable in a bankruptcy action by virtue of 11 U.S.C. § 541(c)(2). (See *Patterson v. Shumate*, 504 U.S. 753 (1992), which states that the essentially identical provision of the Employee Retirement Income Security Act of 1974 (ERISA) is enforceable in a bankruptcy action.) Consequently, your TSP account cannot be made a part of your bankruptcy estate.

If any party to your bankruptcy action purports to require a payment from your TSP account, contact the Board’s Office of General Counsel at the address or phone number on the top of this fact sheet.

**10. *Can I obtain a hardship withdrawal during my bankruptcy action?***

The answer to this question depends on whether you file an action under chapter 7 or under chapter 13 of the Bankruptcy Code.

A chapter 7 bankruptcy action does not affect your ability to obtain a financial hardship in-service withdrawal.

However, a participant who is a debtor in a chapter 13 bankruptcy action is not eligible for a financial hardship in-service withdrawal because such a withdrawal is only available to a participant who demonstrates that his or her net monthly income is insufficient to pay ordinary monthly household expenses. For a debtor in a chapter 13 bankruptcy action, the bankruptcy court will ensure that the debtor has sufficient funds to pay living expenses.